CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1940

No. 183

HENRY W. TAFT AND JULIA W. S. TAFT,
PETITIONERS,

vs.

GUY T. HELVERING, COMMISSIONER OF
INTERNAL REVENUE

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED JUNE 26, 1940.

CERTIORARI GRANTED OCTOBER 14, 1940.

BLANK PAGE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 183

HENRY W. TAFT AND JULIA W. S. TAFT, PETITIONERS,

vs.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

INDEX.

	Original	Print
Proceedings before United States Board of Tax Appeals....	1	1
Docket entries	1	1
Petition	3	2
Exhibit "A"—Notice of deficiency	8	5
Answer	14	9
Opinion, Hill, M.	16	10
Decision	22	15
Petition for review and assignments of error.....	23	15
Notice of filing petition for review.....	30	20
Statement of evidence	31	21
Caption and appearances	31	21
Stipulation re contributions.....	31	21
Testimony of Henry W. Taft.....	32	21
Order approving statement of evidence.....	39	27
Respondent's Exhibit "A"—Income tax return for year 1934	41	29
Respondent's Exhibit "B"—Income tax return for year 1935	43	31
Praecipe for transcript of record	44	35
Clerk's certificate .....(omitted in printing)..	46	36
Proceedings in U. S. C. C. A., Second Circuit.....	47	37
Opinion, per curiam	47	37
Judgment	48	37
Clerk's certificate	50	38
Order allowing certiorari	51	39

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 17, 1940.

BLANK PAGE

[fol. 1]

BEFORE UNITED STATES BOARD OF TAX APPEALS

Docket No. 90,321

HENRY W. TAFT and JULIA W. S. TAFT, Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE, Respondent

Appearances:

For Taxpayer: Henry W. Taft, Esq., Clarence Castimore, Esq.,
For Comm'r: S. U. Hiken, Esq.

DOCKET ENTRIES

1937

Aug. 19. Petition received and filed. Taxpayer notified (Fee paid).
Aug. 19. Copy of petition served on General Counsel.
Sept. 10. Answer filed by General Counsel.
Sept. 10. Motion for circuit hearing at New York City filed by General Counsel. 9/13/37 granted.
Sept. 14. Copy of answer served on taxpayer.

1938

Nov. 16. Hearing set Jan. 9, 1939, New York, N. Y.

1939

Jan. 9. Hearing had before Mr. Hill, Div. 2, on the merits. Submitted. Pets'. brief 30 days; Respondent's brief 30 days; Petitioners' reply brief 15 days.
Jan. 23. Transcript of hearing of Jan. 9, 1939 filed.
Feb. 7. Brief filed by taxpayer. 2/7/39 copy served on General Counsel.

[fol. 2]

Mar. 10. Brief filed by General Counsel.
July 13. Opinion rendered, Sam B. Hill, Div. 2. Decision will be entered for the respondent.
July 17. Decision entered, Sam B. Hill, Div. 2.
Oct. 11. Petition for review by United States Circuit Court of Appeals, Second Circuit, with assignments of error filed by taxpayer.

Oct. 11. Proof of service filed by taxpayer.
Dec. 2. Agreed statement of evidence lodged.
Dec. 2. Agreed praecipe for record filed—with proof of service thereon.
Dec. 4. Agreed statement of evidence approved and ordered filed.
Dec. 6. Order enlarging time to December 20, 1939, for transmission and delivery of record, entered.

[fol. 3] BEFORE UNITED STATES BOARD OF TAX APPEALS

[Title omitted]

PETITION

The above-named taxpayers hereby petition for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency dated June 9, 1937, and as a basis for the proceeding allege as follows:

First. Petitioners are individuals, husband and wife, and are residents of New York, N. Y., and their mailing address is c/o Messrs. Cadwalader, Wickersham & Taft, 14 Wall Street, New York, N. Y.

Second. The notice of deficiency (a copy of which is attached hereto marked Exhibit "A") was mailed to the petitioners on or about June 9, 1937.

Third. The taxes in controversy are income taxes for the calendar year 1934 in the amount of $722.79 and for the calendar year 1935 in the amount of $827.17.

Fourth. The Commissioner erred in his determination set forth in the said notice of deficiency in the following particulars:

(a) In disallowing a deduction from gross income for charitable contributions during the year 1934 in the amount of $1,475.19.

(b) In disallowing a deduction from gross income for charitable contributions during the year 1935 in the amount of $1,543.50.

[fol. 4] Fifth. The facts upon which the petitioners rely as a basis for this proceeding are as follows:

(a) Petitioners, husband and wife, are citizens of the United States, and residents of the City of New York.

(b) Petitioners filed a joint return for the year 1934 reporting net income in the amount of $83,682.99 and claiming deductions in the amount of $2,852 for charitable contributions, of which $1,477 was shown as "made by" Mrs. Taft, one of your petitioners.

(c) Mrs. Taft's net income for the year 1934 was $12.10 being dividends on six shares of Continental Can Company common stock, the only security then owned by her. The Commissioner disallowed so much of the $1,477 as exceeded 15% of $12.10, i. e., $1,475.19.

(d) During the year 1934, Mrs. Taft had no funds from which she could have made contributions other than money furnished to her by her husband, Mr. Taft, except the $12.10 referred to above.

(e) Petitioners filed a joint return for the year 1935 reporting net income in the amount of $92,374.59 and claiming deductions in the amount of $2,715.80 for charitable contributions of which amount $1,545.80 was shown as "made by" Mrs. Taft, one of your petitioners.

(f) Mrs. Taft had net income for the calendar year 1935 in the amount of $15.30 being dividends received on six shares of Continental Can Company, referred to above. This was the only security that Mrs. Taft held during the year 1935. The Commissioner disallowed so much of the said contribution of $1,545.80 as exceeded 15% of the said $15.30, to wit, $1,543.50.

(g) During the year 1935, Mrs. Taft had no funds from which she could have made such charitable contributions other than monies furnished to her by Mr. Taft, except the $15.30 above mentioned.

[fol. 5] (h) From time to time during the years 1934 and 1935, as was his custom, Mr. Taft paid over to Mrs. Taft various sums of money. Generally $500 was paid on the first of each month and $250 in the middle of the month, although sometimes these sums were supplemented by additional sums which he furnished to her. This was a practice of many years standing. Mrs. Taft banked the money so received from her husband in her own name for her own

personal convenience. This money was turned over to Mrs. Taft by her husband with the express knowledge and distinct understanding that some of it would be devoted by her to charity. For many years the petitioners had adopted a policy of devoting a portion of the family income to charitable uses, and it was mutually understood that the total amount of contributions to be made by Mrs. Taft would aggregate about the same amount each year. Petitioners never considered the charitable gifts made in the name of Mrs. Taft, or reported by her as so made, to be purely personal gifts by her, but they were regarded as a community or family gift in which Mrs. Taft determined the amount and the organizations with respect to charities with which she was familiar or in which she had an interest, while Mr. Taft gave, in his own name, to other organizations with which he was familiar or in which he had a particular interest. That this mutual understanding between these petitioners was in fact carried out is shown by the contributions made under Mrs. Taft's name for a period of years. Thus, in 1931 the charitable contributions made under her name amounted to $1,506, in 1932, $1,210, in 1933, $1,628, in 1934, $1,477 and in 1935, $1,545.80. As Mrs. Taft did not have any income producing properties of her own except the very small amount of stock referred to above, nor any other separate funds, the money with which these charitable contributions were made came from one source only, that is [fol. 6] from the funds turned over to her by Mr. Taft in accordance with the custom and understanding referred to above, and with the express knowledge that a portion of them would be used for charitable purposes, in accordance with that understanding.

(i) Petitioners are informed and verily believe that the said sums of $1,475.19 and $1,543.50 disallowed by the Commissioner, referred to in paragraph 4 hereof, are proper deductions from the gross income of your petitioners for the years, 1934 and 1935 respectively.

Wherefore, your petitioners pray that the Board may hear this proceeding and determine the matters herein above set forth and find that here is no deficiency, and grant such other and further relief as to the Board may seem just and equitable.

Henry W. Taft, Per se, Clarence Castimore, Counsel for Petitioners, 14 Wall Street, New York, N. Y.

[fol. 7] *Duly sworn to by Julia W. S. Taft and Henry W. Taft. Jurats omitted in printing.*

[fol. 8] EXHIBIT "A" TO PETITION

(Letterhead of)

SN-N. Jun. 9, 1937.

Treasury Department, Washington

Office of Commissioner of Internal Revenue

Address reply to Commissioner of Internal Revenue.
And refer to Mr. Henry W. Taft and Mrs. Julia W. S. Taft, 14 Wall Street, New York, New York.

Sir and Madam:

You are advised that the determination of your income tax liability for the taxable year(s) ended December 31, 1934 and 1935 discloses a deficiency of $1,549.96 as shown in the statement attached.

In accordance with section 272(a) of the Revenue Act of 1934, notice is hereby given of the deficiency mentioned. Within ninety days (not counting Sunday or a legal holiday in the District of Columbia as the ninetieth day) from the date of the mailing of this letter, you may file a petition with the United States Board of Tax Appeals for a redetermination of the deficiency.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the [fol. 9] attention of IT:CI:P-7. The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency and will prevent the accumulation of interest, since the interest period terminates thirty days after filing the form, or on the date assessment is made, whichever is earlier.

Respectfully, Guy T. Helvering, Commissioner,
(Signed) By Chas. T. Russell, Deputy Commissioner.

Enclosures: Statement Form 870

STATEMENT

IT:A:1
MHK-90D

In re: Mr. Henry W. Taft and Mrs. Julia W. S. Taft,
14 Wall Street, New York, New York.

Tax Liability for Taxable Years Ended
December 31, 1934 and 1935

Income Tax	Liability	Assessed	Deficiency
1934	$22,209.65	$21,486.86	$ 722.79
1935	26,490.00	25,662.83	827.17
Totals	$48,699.65	$47,149.69	$1,549.96

[fol. 10] The deficiency shown herein is based upon the reports dated May 29, 1936 and January 19, 1937, prepared by Internal Revenue Agent W. C. Baptist and Louis Keifer, copies of which were transmitted to you.

Careful consideration has been given your protests dated July 16, 1936, November 12, 1936 and February 10, 1937, in connection with the report of the internal revenue agent in charge at 17 Battery Place, New York, the information submitted at the conference held in the internal revenue agent's office on December 4, 1936, and the conference held in this office March 4, 1937.

1934

Net income reported on return (Husband and wife)	$83,682.99
Add:	
Contributions disallowed	1,475.19
Adjusted net income	$85,158.18

Explanation of Change

Contributions amounting to $1,477.00 made by Mrs. Taft have been decreased $1.81, which amount represents 15 per cent of her total net income of $12.10. This adjustment is in accordance with the provisions of article 23(o)(1) and section 23 of the Revenue Act of 1934 which provides as follows:

"Whether a husband and wife make a joint return or separate returns, the 15 per cent limitation on the deduction

for contributions or gifts is based on the separate net income (computed without regard to such contributions or gifts) of the spouse making the contributions or gifts."

[fol. 11] Computation of Tax

Adjusted net income			$85,158.18
Less:			
Personal exemption			2,500.00
Surtax net income			$82,658.18
Less:			
Dividends		$17,661.48	
Earned income credit (10% of $14,000.00)	$1,400.00		
10% of $12.10	1.21		
		1,401.21	
			19,062.69
Income subject to normal tax			$63,595.49
Normal tax at 4% on $63,595.49			$ 2,543.82
Surtax on $82,658.18			19,696.18
Total Tax			$22,240.00
Less:			
Income tax paid at source			30.35
Correct tax liability			$22,209.65
Previous assessment, account #200937			21,486.86
Deficiency			$ 722.79

Mr. Henry W. Taft and
Mrs. Julia W. S. Taft — Statement.

[fol. 12] 1935

Net income reported on return	$92,374.59
Add:	
Contributions disallowed	1,543.50
Adjusted net income	$93,918.09

Explanation of Change

In accordance with the provisions of article 23(o)(1) of the Revenue Act of 1934, the contributions of $1,545.80 claimed by Mrs. Taft have been decreased to $2.30, which represents 15 per cent of her total net income.

When the husband and wife make a joint return or separate returns the 15 per cent limitation on the deduction for contributions or gifts is based on the separate net income (computed without regard to such contributions or gifts) of the spouse making the contributions.

Computation of Tax

Adjusted net income			$93,918.09
Less:			
Personal exemption			2,500.00
Surtax net income			$91,418.09
Less:			
Dividends		$19,630.49	
Earned income credit			
(10% of $14,000.00)	$1,400.00		
10% of $13.00	1.30		
		1,401.30	
			21,031.79
[fol. 13] Income subject to normal tax			$70,386.30
Normal tax at 4% on $70,386.30			$ 2,815.45
Surtax on $91,418.09			23,709.05
Total tax			$26,524.50

Mr. Henry W. Taft and
Mrs. Julia W. S. Taft. — Statement.

Brought forward	$26,524.50
Less:	
Income tax paid at source	34.50
Correct tax liability	$26,490.00

Tax previously assessed, account #203674	25,662.83
Deficiency	$ 827.17

[fol. 14] BEFORE UNITED STATES BOARD OF TAX APPEALS

[Title omitted]

ANSWER

The Commissioner of Internal Revenue, by his attorney, Morrison Shafroth, Chief Counsel, Bureau of Internal Revenue, for answer to the petition in the above-entitled proceeding, admits and denies as follows:

First, Second and Third. Admits the allegations contained in paragraphs First, Second and Third of the petition.

Fourth. Denies the assignments of error contained in subparagraphs (a) and (b) of paragraph Fourth of the petition.

Fifth. Admits the allegations contained in subparagraph (a) of paragraph Fifth of the petition.

Admits the allegations contained in subparagraph (b) of paragraph Fifth of the petition, but denies that Mrs. Taft is entitled to the deduction of $1,477.00 for charitable contributions as claimed in said subparagraph.

Admits that respondent disallowed so much of the said $1,477.00 ([b] above) as exceeded 15% of $12.10. For lack of information as to the actual facts respondent denies the remaining allegations contained in subparagraph (c) of paragraph Fifth of the petition.

For lack of information as to the actual facts respondent denies the allegations contained in subparagraph (d) of paragraph Fifth of the petition.

[fol. 15] Admits the allegations contained in subparagraph (e) of paragraph Fifth of th petition, but denies that Mrs. Taft is entitled to the deduction of $1,545.80 for charitable contributions, as claimed in said subparagraph.

Admits that respondent disallowed so much of the said $1,545.80 ([e] above) as exceeded 15% of $15.30. For

lack of information as to the actual facts respondent denies the remaining allegations contained in subparagraph (f) of paragraph Fifth of the petition.

For lack of information as to the actual facts respondent denies the allegations contained in subparagraphs (g) and (h) of paragraph Fifth of the petition.

Denies the allegations contained in subparagraph (i) of paragraph Fifth of the petition.

Sixth. Denies generally and specifically each and every allegation contained in the petition, not hereinabove admitted, qualified or denied.

Wherefore, it is prayed that the appeal of the petitioners be denied.

(Signed) Morrison Shafroth, Chief Counsel, Bureau of Internal Revenue.

Of Counsel: Leslie H. Rushbrook, John W. Smith, Special Attorneys, Bureau of Internal Revenue.

JWS/hco 9/10/37.

[fol. 16] BEFORE UNITED STATES BOARD OF TAX APPEALS

Docket No. 90321. Promulgated July 13, 1939

HENRY W. TAFT and JULIA W. S. TAFT, Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent

Held, where husband and wife file joint income tax returns, the wife's individual income and not the aggregate income shown in the return is the base to which the percentage formula provided in section 23 (o) of the Revenue Act of 1934 is applied in determining the deduction allowable on account of her charitable contributions. Art. 23 (o)-1, Regulations 86.

Clarence Castimore, Esq., for the petitioners.

Sidney U. Hiken, Esq., for the respondent.

OPINION

Hill: This proceeding is for the redetermination of income tax deficiencies for the years 1934 and 1935 in the respective amounts of $722.79 and $827.17. The issue is

whether or not respondent correctly computed deductions allowable on account of charitable contributions made by a wife from income shown in a joint income tax return filed for herself and husband.

The petitioners are husband and wife and when referred to individually in this opinion will sometimes be called "husband" and/or "wife." They reside in New York City, New York, and for each of the taxable years they filed a joint income tax return. Petitioners' return for 1934 showed an aggregate net income of $83,682.99, after a deduction of $2,852 was taken from gross income on account of contributions made by both petitioners during the year to charities. Of this sum deducted, $1,477 represented contributions made [fol. 17] by the wife and the balance represented gifts made by the husband during the year. The wife's net income, computed without reference to such contributions for the year and reported in the return, amounted to $12.10. The petitioners' return for 1935 reflected a joint net income of $92,374.59, after deducting $2,715.80 for charitable contributions made in the year. Of this latter sum $1,545.80 represented gifts made by the wife and the balance gifts by the husband in the year. The wife's net income in 1935, computed without reference to such contributions, amounted to the sum of $15.30. The wife's contributions to charities were made from gifts to her by the husband. During the years 1934 and 1935 and for many years prior thereto the husband had made gifts to the wife through bank checks and cash. Such gifts in 1934 and 1935 totaled more than $9,000 a year. Such checks and cash were in the main deposited by the wife in her own bank account and checked out by her for such purposes as she desired, including the charitable gifts in question. No conditions were attached to the gifts of the husband to the wife and no restrictions were imposed upon the use to which the wife might devote the proceeds thereof. They became her property absolutely to use as she pleased. The husband consulted with the wife at times respecting her gifts to charity, and at times made suggestions with reference thereto, but did not direct what gifts the wife should make or in any way control her actions in respect thereof. In respondent's audit of the returns for the taxable years, he adjusted the deduction claims in each by allowing only so much of the portion attributable to gifts of the wife as equaled 15 per cent of her individual net income computed without refer-

ence to such contributions for the related year. The net result of respondent's adjustments was to reduce the amount of deduction claimed for the wife's gifts in 1934 from $1,477 to $1.81, and the amount of deduction allowed for her gifts in 1935 from $1,545.80 to $2.30. The peti- [fol. 18] tioners charge that respondent committed error in such adjustments and contend that the aggregate net income shown in each return should have been used as the base for determining the deductions for charitable contributions in each year.

The issue is governed by section 23 (o) of the Revenue Act of 1934, which provides that in computing net income of individuals deductions shall be allowed for charitable and other contributions made during the taxable year to an amount which does not exceed 15 per cent of the taxpayer's net income as computed without benefit of the sub-section, and by section 51 (b) (2) of the act, which provides that where a husband and wife report their individual incomes in a single joint return the tax shall be computed on the aggregate income. The respondent's interpretation of these provisions is found in Treasury Regulations 86, which reads in part as follows:

Art. 23 (o)-1. Contributions or Gifts by Individuals.—

* * * * * * *

Whether a husband and wife make a joint return or separate returns, the 15 per cent limitation on the deduction for contributions or gifts is based on the separate net income (computed without regard to such contributions or gifts) of the spouse making the contributions or gifts. (See article 51-1.)

Art. 51-1. Individual returns.— * * * if the income of each [spouse] is included in a single joint return, the tax is computed on the aggregate income and all deductions and credits to which either is entitled shall be taken from such aggregate income.

The petitioners contend that the respondent had no right to break down the aggregate incomes shown in their returns [fol. 19] and use the wife's individual net income in each as the base in applying the statutory percentage of 15 per cent to determine the allowable deduction with respect to her contributions to charities. Petitioners assign two reasons why under their theory this act of the respondent consti-

tuted error. Their first reason is based upon special facts which they seek to show the record sustains. They claim that in substance and for all practical purposes the gifts here in dispute were made by the wife for and in behalf of the husband and should be so treated in the returns. They point to the showing made in the record to the effect that, except for the nominal sums derived from dividends upon six shares of Continental Can Co. stock, the wife had no income or source of revenue, and that all of these gifts were made from a fund built up and accumulated from money supplied by the husband. Under such circumstances the petitioners argue the gifts should be considered as family gifts, in making which the wife acted as agent for the husband.

We do not think the record warrants the findings of fact petitioners urge in this first contention. It is true that substantially all of the gifts in question were made from money which the husband had from time to time given to the wife, and that her independent income was so insignificant as to justify our ignoring it as a feature. These circumstances, however, are without importance in view of the fact the funds when given belonged to the wife and were at all times her sole property and subject to her unrestricted use and control. This question as to the wife's clear title to the funds in question is so conclusively shown in the record as to leave no room for doubt or require argument to sustain. Nor did the husband contend otherwise when testifying on this phase of the case as a witness at the hearing, but frankly stated that he made all gifts to his wife without restrictions and for her sole use, benefit and control.

[fol. 20] The record shows that the husband and wife sometimes discussed with each other the question of gifts which each intended to make to charities, and the former stated in his testimony that for a number of years he had known of his wife's gifts and that "there may have been a case" where they discussed them in order to determine the amount he would "contribute directly in addition," but he could not recall "any particular one." Generally speaking, he said that the wife selected the beneficiaries for and amounts of her contributions without advice from him. The petitioners attach importance to the consultations between husband and wife referred to in the above statement and argue that it supports the theory that the former in this case exercised sufficient control over the gifts to make him

the principal and the wife his agent in their giving, but we do not think so. At most they show that the husband may have been influenced by the gifts made or to be made by the wife, but in no respect do they indicate that her gifts were controlled by him. Rather, we think, the explanations made by the husband on the witness stand negative the agency theory and support the respondent's side of the controversy on this point. On this question we overruled the contentions of the petitioners and hold that the gifts here involved were made by and in behalf of the wife from her individual funds.

Petitioners next argue that, in any event, the respondent erred in using the individual income of the wife as the percentage base for computing deductions attributable to her donations. On this issue they argue that the result of the filing of a joint income tax return by husband and wife under section 51 (b) (2), supra, is to create a taxing entity with a single income from and by which all deductions are made and determined. We do not agree with this contention. The spouses do not lose their identities as individual taxpayers by joining in a single income tax return. Pierce [fol. 21] v. Commissioner, 100 Fed. (2d) 397, and cases therein cited; Walter C. Janney, 39 B. T. A. 240.

Accordingly, the amount of the deduction in the joint return on account of the wife's contributions to charities must be determined on the basis of her individual net income and the application thereto of the statutory formula in section 23 (o), supra, as was done by the respondent herein.

The rule contended for by the petitioners would violate the formula fixed in the statute and substitute a new one not applicable to the income of the taxpayer who gave, but to his income increased by the income of another, a stranger to the gifts. It is obvious that such construction of the provision would pervert the object of the law and by the enlarged deduction resulting therefrom extend its benefits to one in no way connected with the gifts on which deductions are claimed. In our opinion such a construction is unauthorized. The regulation applied by the respondent prevents such a perversion of the act and protects all rights of both the Government and the taxpayer. It allows all deductions and credits to which either spouse to such a return would be entitled in making an individual return. In our opinion the respondent committed no error

in applying law to the facts at bar and we therefore sustain his action herein.

Decision will be entered for the respondent.

[fol. 22] BEFORE UNITED STATES BOARD OF TAX APPEALS

WASHINGTON

Docket No. 90321

HENRY W. TAFT and JULIA W. S. TAFT, Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent

DECISION

Pursuant to the determination of the Board, as set forth in its report promulgated July 13, 1939, it is

Ordered and Decided: That there are deficiencies in income tax for the years 1934 and 1935 in the respective amounts of $722.79 and $827.17.

Enter:

(s) Sam B. Hill, Member.

Entered July 17, 1939.

[fol. 23] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

B. T. A. Docket No. 90,321

[Title omitted]

PETITION FOR REVIEW AND ASSIGNMENT OF ERRORS

To the Honorable Judges of the United States Circuit Court of Appeals for the Second Circuit:

Come now Henry W. Taft and Julia W. S. Taft by Henry W. Taft and Clarence Castimore, their counsel, and respectfully show:

I

That this is a proceeding for review by the United States Circuit Court of Appeals for the Second Circuit of a deci-

sion of the United States Board of Tax Appeals entered on July 17, 1939, determining that there was a deficiency in income tax of your petitioners for the years 1934 and 1935 in the respective amounts of $722.79 and $827.17.

II

Nature of the Controversy

The nature of the controversy is as follows: Petitioners, husband and wife, filed joint Federal income tax returns [fol. 24] for the calendar years 1934 and 1935. Petitioners' return for the year 1934 showed an aggregate net income of $83,682.99 after a deduction of $2,852 was taken from gross income on account of contributions to charities made during that year. Of this sum so deducted, $1,477 represented contributions made by the wife's check out of her separate bank account. The petitioners' return for the year 1935 reflected a joint net income of $92,374.59 after deducting $2,715.80 for charitable contributions made during the year, of which latter sum $1,545.80 represented contributions made by the wife's check out of her separate bank account. The wife's gross income for the year 1934 was $12.10 and for the year 1935 it was $15.30. The Commissioner of Internal Revenue limited the deduction allowable on account of the wife's charitable gifts to 15% of her gross income, that is, he allowed a deduction of $1.81 for the year 1934 and $2.30 for the year 1935.

The sole question involved is whether under the circumstances of this case, the Commissioner's action in limiting the deduction for charitable gifts made in the wife's name and out of her bank account to 15% of her net income is in accordance with the law.

III

Court Where Review Is Sought

The petitioners filed their income tax returns for the calendar years 1934 and 1935 with the Collector of Internal Revenue for the Second District in the United States Custom House in the City and State of New York, whose office is located within the jurisdiction of the United States Circuit Court of Appeals for the Second Circuit, and review of the decision of the United States Board of Tax Appeals is sought in this Circuit.

[fol. 25]

IV

Assignment of Errors

The petitioners assign as error the following acts and omissions of the United States Board of Tax Appeals.

1. The Board erred in finding and holding that the wife was not the agent of the husband or the means through which he made gifts to charity.

2. The Board erred in failing to find and hold that the wife was the agent of the husband or the means through which he made gifts to charity.

3. The Board erred in failing to find as a fact that for a period of nearly twenty years, including the taxable years 1934 and 1935, the husband had transferred funds to the wife with the knowledge and with his assent that a portion thereof, which had averaged about the same dur[illegible] all the years, would be devoted to charity.

4. The Board erred in finding and holding that Article 23 (o)-1 of Treasury Regulations 86 was, in whole or in part, a valid interpretation of Section 23 (o) of the Revenue Act of 1934.

5. In the alternative, the Board erred in holding and deciding that said regulation applied to the peculiar circumstances of this case.

6. The Board erred in holding and finding that the husband could not have taken as a charitable deduction the sums transferred to his wife and used by her for charity if husband and wife had filed separate returns.

7. The Board erred in failing to find and hold that the husband could have taken as a charitable deduction the [fol. 26] sums transferred to his wife and used by her for charitable purposes had he filed a separate return.

8. The Board erred in finding and deciding that the construction contended for by the taxpayer in this case would pervert the object of the statute and allow a stranger to the charitable gifts to get an unauthorized deduction therefor.

9. The Board erred in striking from the record certain testimony of the witness and in rejecting all testimony of the witness tending to show a consistent administrative interpretation of the Revenue Acts as applied to these tax-

payers for a period of years. The testimony so stricken and rejected was as follows:

(a) "Q. Well,——

A. I have known these were to be made, and I may say that at least since 1920 down to 1934, that never was any question made by the Treasury Department to these being properly made.

Mr. Hiken: I object to that and ask to have it stricken out.

The Member: Yes.

The Witness: Of course, I am not arguing this case, but I think that is very pertinent.

By Mr. Castimore:

Q. Well,——

A. What?

Q. Go ahead.

A. For the reason that——

Mr. Hiken: Excuse me. Just a minute. It has been objected to, and sustained.

The Member: That was objected to.

Mr. Hiken: I ask that it be stricken from the record.

The Member: It may be stricken from the record.

Mr. Castimore: Exception.

The Member: Exception allowed."

• • • • • • •

[fol. 27] (b) By Mr. Castimore:

"Q. Do you know whether these contributions have been set up during these years on the returns in the same form as they are in these last two years?

Mr. Hiken: I object to that, to what was done in the prior years.

The Member: I will sustain the objection.

Mr. Castimore: I would just like to note an exception.

The Member: Exception allowed.

Mr. Castimore: The reason for requesting this is that there is a regulation on the books which gives some color to this; secondly, that for years it was not occurred* and

* Obviously a mistake in reporting. This statement must have been "not disallowed."

it seems to us it must have been on one or two theories, namely that the regulation allowed it, or this theory and the one which we believe is the sound one, namely, that Mrs. Taft was the conduit or the agent of Mr. Taft and made these contributions from year to year. It is long standing, and they were not disallowed in prior years.

The Member: Whether it was allowed or disallowed does not affect the law in this case, and I will sustain the objection.

Mr. Castimore: The exception is already noted."

10. The Board erred in rejecting the offer of counsel for the taxpayer to place in evidence the returns of these taxpayers for past years. The ruling of the Board on this question was as follows:

"Mr. Castimore: May I say just one thing before we adjourn?

Mr. Taft is much concerned here. He is much concerned about wanting to have the prior returns placed in evidence, the joint returns, and I did not bring them with me.

[fol. 28] Mr. Hiken: I object to the offer.

The Member: I do not think they are relevant. The idea probably is that they were accepted by the Bureau and probably it might be some evidence, but what the Bureau thought does not bind the Board, and the Board will go ahead and determine what the law is regardless of what the Bureau did.

Mr. Castimore: Then I assume, your Honor, that if I did have them here, that they would be rejected?

The Member: An objection being made, I would have to sustain the objection.

Mr. Castimore: May I note an exception to a ruling of that sort?

The Member: Yes, you may have an exception."

11. The Board erred in holding and deciding that there were deficiencies in income tax for the calendar years 1934 and 1935 in the respective amounts of $722.79 and $827.17.

Wherefore, the petitioners being aggrieved by the aforesaid acts and omissions of the United States Board of Tax Appeals and by the opinion and decision entered pursuant thereto, petition that the decision of the said Board be reviewed by the United States Circuit Court of Appeals for the Second Circuit; that a transcript of the record be pre-

pared in accordance with the law and with the rules of said Court and submitted to the Clerk of said Court for filing, and that appropriate action be taken to the end that the errors complained of may be reviewed and corrected by said Court.

Dated: New York, N. Y., October 5th, 1939.

Henry W. Taft, Clarence Castimore, Attorneys for Petitioners; Cadwalader, Wickersham & Taft, 14 Wall Street, New York, N. Y.

[fol. 29] *Duly sworn to by Clarence Castimore. Jurat omitted in printing.*

[fol. 30] [File endorsement omitted.]

IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

B. T. A. Docket No. 90,321.

[Title omitted]

NOTICE OF FILING PETITION FOR REVIEW—Filed October 11, 1939

To: Guy T. Helvering, Esq., Commissioner of Internal Revenue, Washington, D. C.

Please take notice that the petitioners on the 11th day of October, 1939, filed with the Clerk of the United States Board of Tax Appeals at Washington, D. C., a Petition for Review by the United States Circuit Court of Appeals for the Second Circuit of a decision of the Board heretofore rendered in the above entitled cause. A copy of the Petition for Review and Assignment of Errors, as filed, is hereby attached and served upon you.

Dated: New York, N. Y., October 5th, 1939.

Henry W. Taft, Clarence Castimore, Attorneys for Petitioners.

Personal service of the above and foregoing notice, together with a copy of the Petition for Review and Assign-

ment of Errors, mentioned therein, is hereby acknowledged this 11th day of October, 1939.

J. P. Wenchel, Attorney for Respondent on Review.

BEFORE UNITED STATES BOARD OF TAX APPEALS

[Title omitted]

[fol. 31] [File endorsement omitted]

Statement of Evidence—Filed Dec. 4, 1939

The above entitled cause came on for hearing before the Honorable Sam B. Hill, Member of the United States Board of Tax Appeals, at New York, New York, on the 9th day of January, 1939, pursuant to notice of hearing theretofore given. Hearing began at 4:50 o'clock P. M. and was concluded on the same day. There were present the petitioners by their counsel, Clarence Castimore, and the respondent by his counsel, Sidney U. Hiken.

The following is a statement of the evidence, so far as material to the assignment of errors herein, submitted to the Board of Tax Appeals at the hearing of this cause.

Mr. Castimore made the opening statement for the petitioners during the course of which counsel for the respective parties agreed upon the following stipulation:

STIPULATION

"Julia W. S. Taft made charitable contributions in 1934 and in 1935, which are listed on the schedule attached to the petitioners' joint return for those years as having been made by her. Such contributions were paid by checks which she drew against her individual bank account in the Fifth Avenue Branch of the Guaranty Trust Company of New York."

Counsel for the respondent thereupon made his opening statement.

[fol. 32] HENRY W. TAFT was then called as a witness on behalf of the petitioners and, having been first duly sworn, was examined and testified as follows:

Direct examination:

That he is one of the petitioners in the case; that the name of the other petitioner is Julia W. S. Taft and that she is his wife. That he knew that the only income producing property which Mrs. Taft owned was six shares of the stock of Continental Can Company and that he probably gave them to her many years ago.

He then proceeded to testify as to transfers of funds to Mrs. Taft by means of checks drawn to her order, which checks totaled $8,820 for the year 1934 and $9,850 for the year 1935, and were admitted in evidence as Petitioner's Exhibits 2 and 3; also as to incidental transfers of cash to Mrs. Taft, all of which testimony was offered for the purpose of showing that Mr. Taft was the source of all of the funds in the bank account out of which Mrs. Taft made her contributions except the sum of $12.10 in the year 1934 and $15.30 in the year 1935 which was admitted in the pleadings to have been dividends from the six shares of Continental Can Company stock received and deposited in this account during the years 1934 and 1935.

The course of this testimony was interrupted and concluded when counsel for the respective parties to the action agreed in open court upon the following stipulation:

"Mr. Hiken: It is stipulated, so far as the respondent is concerned, that the charitable contributions that were paid by Mrs. Taft for the years 1934 and 1935 were paid out of her personal bank account and that her bank account consisted of deposits which she made of checks payable to her order, drawn by Mr. Taft and given to her by way of [fol. 33] gifts and other cash items that were given to Mrs. Taft by Mr. Taft and likewise deposited by her in her personal bank account. Is that satisfactory?

Mr. Castimore: That is satisfactory."

The witness resuming:

The witness was then shown a list, attached to the joint return, of the charities to which he contributed personally and the contributions over which this controversy arose and he was asked to look at the list carefully and state whether he was familiar with some of the contributions and the organizations, to which he replied:

"Yes, all of them—I see most of them."

He was then asked whether he ever discussed the matter of charitable gifts with Mrs. Taft, to which he replied:

"I might state in a general way that for many years with my knowledge, she has made numerous charitable gifts to charitable religious organizations for religious purposes, and I have known about that and have known when I paid her, and these amounts I have applied to that purpose and each year I have procured from her a complete list of these contributions.

This goes back—well let us say, twenty years, and I have taken them to my office and enumerated these gifts and had them inserted in my income tax returns. I have known about them from year to year."

Whereupon the following interchange ensued:

"Q. Well——

"A. I have known these were to be made, and I may say that at least since 1920 down to 1934, that never was any question made by the Treasury Department to these being properly made.

[fol. 34] "Mr. Hiken: I object to that and ask to have it stricken out.

"The Member: Yes.

"The Witness: Of course, I am not arguing this case, but I think that is very pertinent.

"By Mr. Castimore:

"Q. Well——

"A. What?

"Q. Go ahead.

"A. For the reason that——

"Mr. Hiken: Excuse me. Just a minute. It has been objected to, and sustained.

"The Member: That was objected to.

"Mr. Hiken: I ask that it be stricken from the record.

"The Member: It may be stricken from the record.

"Mr. Castimore: Exception.

"The Member: Exception allowed."

The witness was then asked again whether he ever discussed these charitable contributions with Mrs. Taft, to which he replied in the affirmative about some of them, but not all of them.

"I can't say all of them, but I knew some of these were from year to year, but * St. Patrick's Cathedral and the Church at White Sulphur Springs, where we go in the summertime, but I didn't have the exact amount, but I knew about the contributions at the end of the year when I got them in order to insert them in my return."

The witness was then asked if he knew what the bank account was used for other than the contributions, to which he replied that sometime she would purchase some article personally, a dress, sometimes a coat, and that the payments that were made to her were not for household ex- [fol. 35] penses as he paid those in addition, and that by the household expenses he meant servants' wages and supplies and things like that. When asked whether the transfers to his wife would ordinarily be called pin money, he replied that allowances to his wife for pin money never was a practice in his family; that he always paid all of the household expenses and that the amount transferred to her was to give her some money to pay for things she wanted, and at times she applied it to the payment of her clothing.

In response to the question whether the knowledge that the contributions were being made from these funds had any effect on the amount of the allowance or transfers to Mrs. Taft, he replied that it was never suggested that he pay her more or less and that the sum which he paid her was for general purposes that she applied part of it to her clothing, but only in part. He assumed for some years the payment of that.

The witness then repeated that he was perfectly well aware that the funds that were transferred to Mrs. Taft were used for charitable purposes; that he had been consulted about them from time to time, not in detail but generally, and that he didn't charge his mind with each particular contribution but knew this from what he learned during the course of ten or twelve years prior to 1934 and that the aggregate amount was about what it was during these two years.

The following then ensued:

"By Mr. Castimore:

"Q. Do you know how long you filed joint returns?
A. What?

* Probably the word was "to".

"Q. Do you know how long you filed joint returns?

"Mr. Hiken: Just a minute. I object to that as immaterial.

[fol. 36] "The Member: I do not see the materiality of it, but I will let it in.

"The Witness: I know that they went back as far as 1920.

"By Mr. Castimore:

"Q. Do you know whether these contributions that have been set up during these years on the returns in the same form as they are in these last two years?

"Mr. Hiken: I object to that, to what was done in the prior years.

"The Member: I will sustain the objection.

"Mr. Castimore: I would just like to note an exception.

"The Member: Exception allowed.

"Mr. Castimore: The reason for requesting this is that there is a regulation on the books which gives some color to this; secondly, that for years it was not occurred * and it seems to us it must have been on one or two theories, namely that the regulation allowed it, or this theory and the one which we believe is the sound one, namely, that Mrs. Taft was the conduit or the agent of Mr. Taft and made these contributions from year to year. It is long standing, and they were not disallowed in prior years.

"The Member: Whether it was allowed or disallowed does not affect the law in this case, and I will sustain the objection.

"Mr. Castimore: The exception is already noted.

"You may cross examine."

[fol. 37] Cross-examination:

Counsel for the respondent then asked the witness whether he imposed any restrictions on how she disposed of the proceeds of the checks turned over to her, to which he replied: "Absolutely not." He was then asked whether the same was true with respect to the cash that was given to her and the reply was the same. In response to the

* Obviously a mistake in reporting. This statement must have been "not disallowed."

question as to whether he selected the donees of the charitable contributions, the witness replied:

"I would not care to answer that question without qualifications. There may have been instances where I did make a suggestion or something of that kind. There probably were, but generally speaking, I would say no."

In response to the question as to whether, generally speaking, she selected the beneficiary and determined the amount, he replied that that was so but

"There may have been a case, for instance, where we conferred as to the amount I was going to contribute and I would ask about it in order to determine the amount that I contribute directly in addition. There may have been such an instance as that. I can't recall any particular one."

Counsel for the respondent then offered in evidence petitioners' income tax return for the year 1934 with schedules attached. The return was received in evidence and marked Respondent's Exhibit "A". Counsel for respondent then offered in evidence petitioners' income tax return for the year 1935, to which were attached the schedules of contributions and it was admitted in evidence and marked Respondent's Exhibit "B".

The witness was thereupon excused.

[fol. 38] After some discussion by counsel about the time for filing briefs, the following ensued:

"Mr. Castimore: May I say just one thing before we adjourn?

"Mr. Taft is much concerned here. He is much concerned about wanting to have the prior returns placed in evidence, the joint returns, and I did not bring them with me.

"Mr. Hiken: I object to the offer.

"The Member: I do not think they are relevant. The idea probably is that they were accepted by the Bureau and probably it might be some evidence, but what the Bureau thought does not bind the Board, and the Board will go ahead and determine what the law is regardless of what the Bureau did.

"Mr. Castimore: Then I assume, your Honor, that if I did have them here, that they would be rejected?

"The Member: An objection being made, I would have to sustain the objection.

"Mr. Castimore: May I note an exception to a ruling of that sort?

"The Member: Yes, you may have an exception.

"Mr. Castimore: Of course, we have not really offered them.

"The Member: Yes, I understand."

Whereupon the hearing was concluded.

November 17, 1939.

Henry W. Taft, Clarence Castimore, Counsel for Petitioners.

[fols. 39-40] Petitioners tender and present the foregoing as a true and complete statement of the evidence submitted to the Board of Tax Appeals which is material to the errors assigned in the petition for review herein. Petitioners pray that the same may be settled and approved by the Board and made a part of the record in this case.

Henry W. Taft, Clarence Castimore, Counsel for Petitioners.

The foregoing is a true and complete statement of the evidence submitted to the Board of Tax Appeals which is material to the errors assigned in the petition for review, and the same is approved by the undersigned as attorney for the respondent on review.

J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, Attorney for Respondent.

The foregoing statement of evidence is settled and approved and made a part of the record herein this — day of November, 1939.

—— ——, Member, United States Board of Tax Appeals.

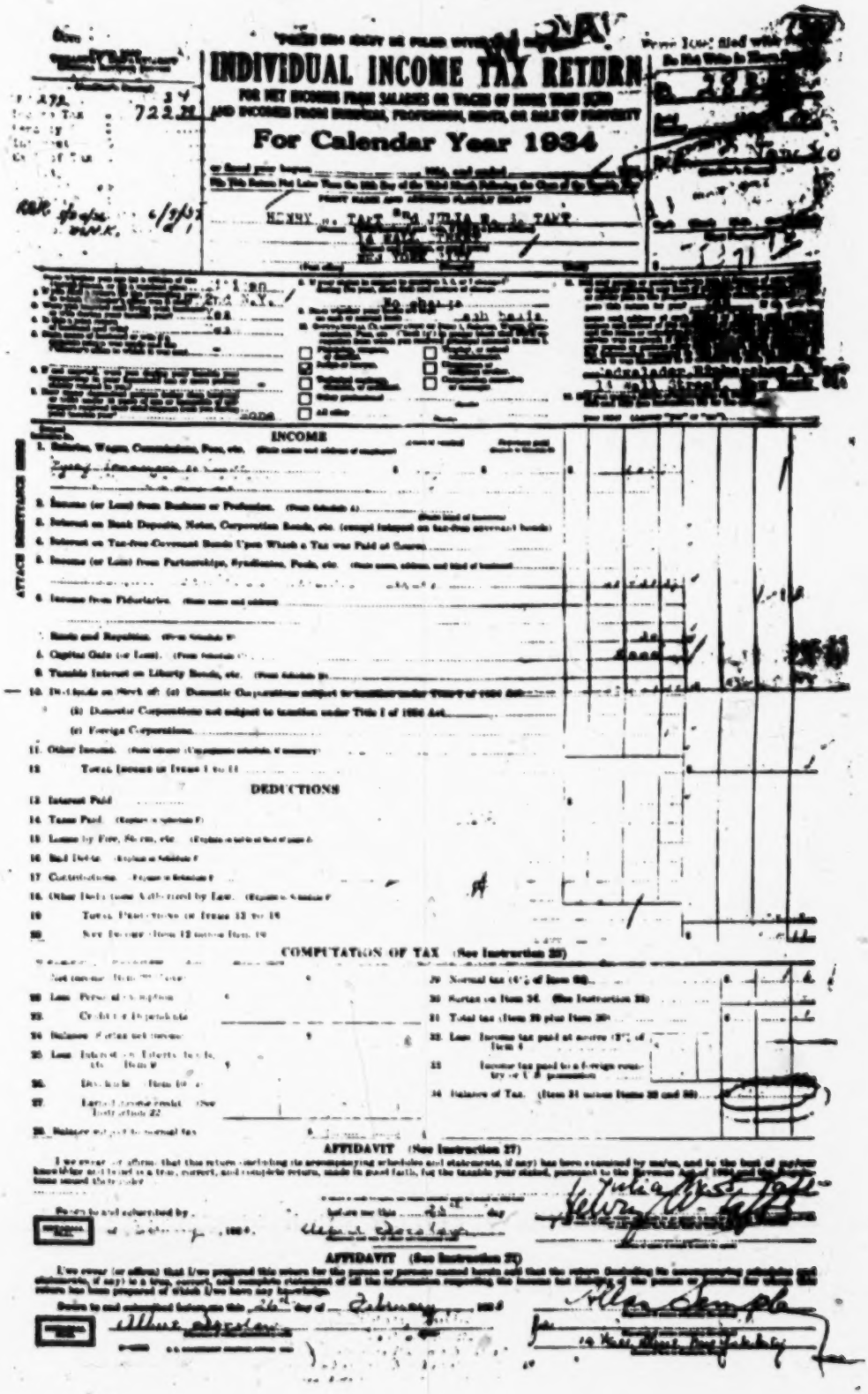
ORDER APPROVING STATEMENT OF EVIDENCE

Approved and ordered filed this 4th day of Dec., 1939.

(s) Sam B. Hill, Member.

BLANK PAGE

RESPONDENT'S EXHIBIT A



INDIVIDUAL INCOME TAX RETURN

FOR NET INCOMES FROM SALARIES OR WAGES OF MORE THAN $3000 AND INCOMES FROM BUSINESS, PROFESSION, RENTS, OR SALE OF PROPERTY

For Calendar Year 1934

INCOME

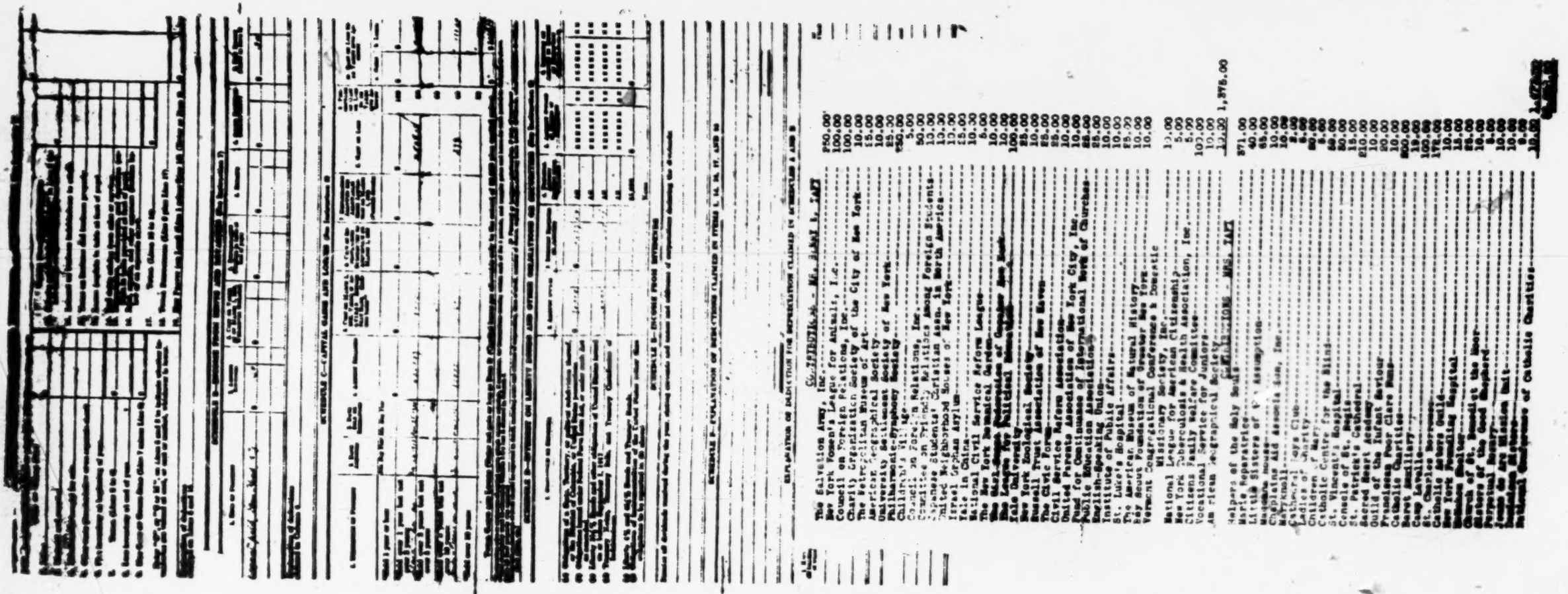
DEDUCTIONS

COMPUTATION OF TAX (See Instruction 22)

AFFIDAVIT (See Instruction 27)

AFFIDAVIT (See Instruction 22)

RESPONDENT'S EXHIBIT A Cont'd.



BLANK PAGE

RESPONDENT'S EXHIBIT B 31

INDIVIDUAL INCOME TAX RETURN

For Calendar Year 1936

MAR 14 1936

INCOME

DEDUCTIONS

COMPUTATION OF TAX (See Instruction 23)

AFFIDAVIT (See Instructions 27)

AFFIDAVIT (See Instruction 27)

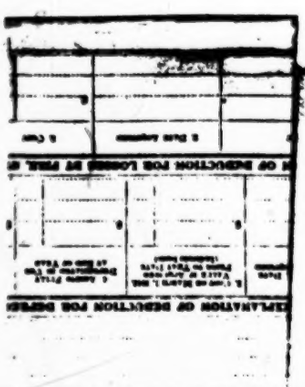
RESPONDENT'S EXHIBIT B Cont'd.

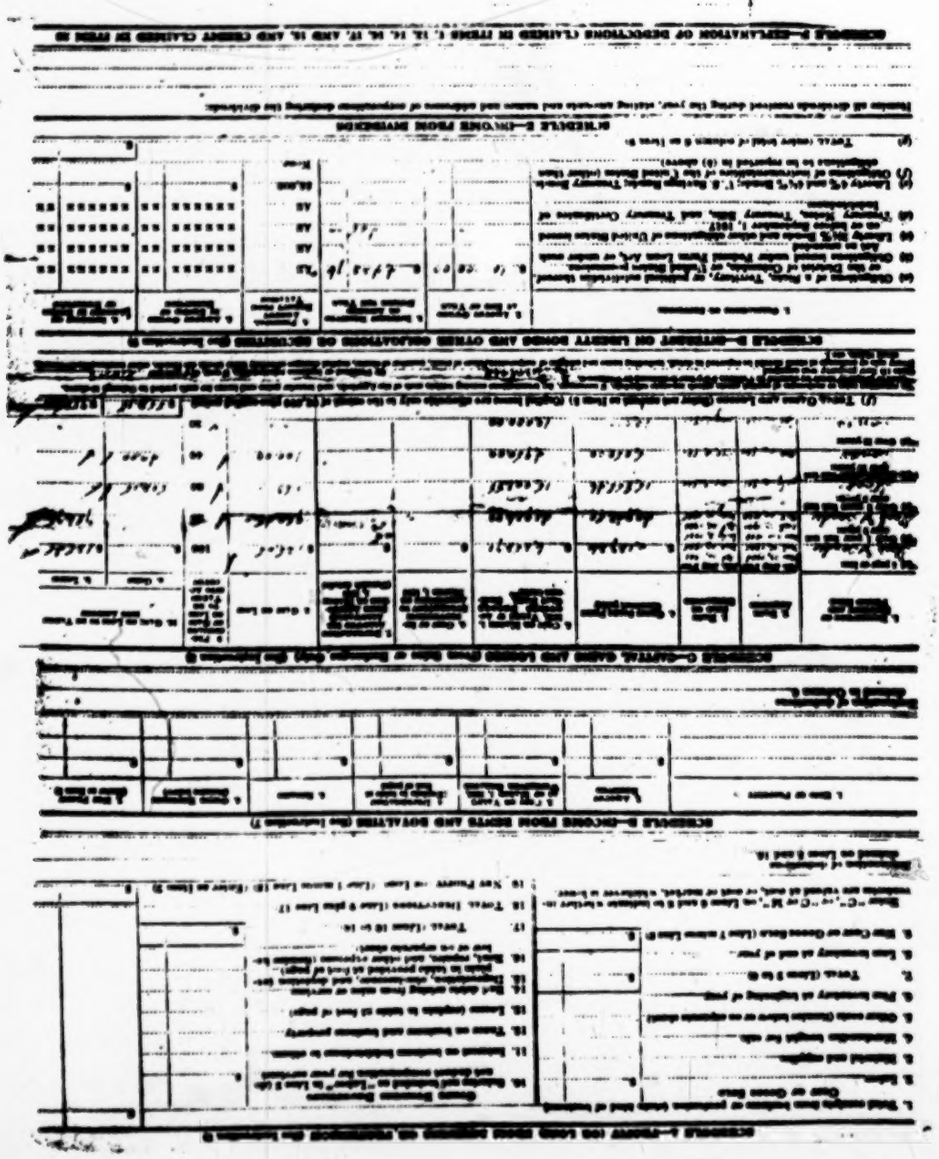
The Metropolitan Museum of Art	$25.00
University Settlement Society of New York	25.00
Charity Organization Society	10.00
Public Education Association	10.00
National Economic League	10.00
Council on Foreign Relations, Inc.	50.00
Society for Japanese Studies	50.00
The Philharmonic-Symphony Society of New York	250.00
National Civil Service Reform League	5.00
The Civic Forum	5.00
National Committee on Prisons and Prison Labor	10.00
The New York Botanical Garden	10.00
National Trust Association	25.00
Council on Foreign Relations, Inc.	100.00
Friendly Relations among Foreign Students	10.00
The Salvation Army	100.00
New York Women's League for Animals, Inc.	25.00
Institute of Public Affairs	10.00
Boy Scout Foundation of Greater New York	10.00
New York Zoological Society	10.00
Public Education Association	10.00
The Museum of the City of New York	10.00
The National Conference of Jews and Christians	10.00
The League for Political Education	100.00
National Civil Service Reform League	5.00
National Kindergarten Association	5.00
The American Christian Committee for Germany	
Refugees	10.00
National Defense Committee	5.00
New York Tuberculosis & Health Association, Inc.	5.00
The Philharmonic-Symphony Society of New York	10.00
The Childrens Aid Society	10.00
The United Hospital Campaign Committee	100.00
Greenwich House	10.00
Vocational Service for Juniors	10.00
University Settlement Society of New York	25.00
	$1,170.00

JOHN HENRY A. TAFT

St. Patricks Cathedral	$250.00
Catholic Young Woman's Club	5.00
National Conference of Catholic Charities	10.00
Sisters of Christian Doctrine	60.00
Little Sisters of the Assumption	50.00
Camp Loyolla	50.00
St. Charles Church, White Sulphur Springs, W. Virginia	100.00
Ladies of Charity	15.00
Needlework Guild of America	10.00
Catholic Actors Guild of America	10.00
Tabernacle Society of the Sacred Heart Convent	5.00
Dominican Sisters of the Sick Poor	4.00
Cathedral Boys Club	5.00
Catholic Center for the Blind	144.60
Marie Reparatrice	25.00
Society of the Children of Mary	5.00
Mckinon Shelter	20.00
Helpers of the Holy Lords	40.00
St. Vincents Hospital	5.00
Dominican Sisters of the Perpetual Rosary	5.00
Franciscan Poor Clare Nuns	5.00
Auxiliary New York Foundling Hospital	15.00
Guild of the Infant Saviour	25.00
Berne Settlement	4.00
Madonna House	5.00
Mary Knoll Fathers	7.00
Chaplains Aid Association	10.00

43a





BLANK PAGE

RESPONDENT'S EXHIBIT B Cont'd.

Item 14 -	Real Estate Taxes, Glen Head, N.Y. Property	$ 949.25
	1934 New York State Income Tax	4,851.87
	Automobile registration	55.25
	Stock transfer stamps	24.00
	Check tax	2.62
	Duty on wine shipment	3.50
	Dues paid on club dues	93.75
	" " " safe rent	2.00
	West Virginia State Tax	85.31
	New York City Sales Tax	177.78
		$6,246.28

Item 15 -	Dues to professional Societies	$ 139.50
	Salary of Secretary	1,213.33
	Collection charges on coupons	1.50
	Subscription to legal publication	40.00
	Safe Rent	20.00
		$1,414.33

BLANK PAGE

BEFORE UNITED STATES BOARD OF TAX APPEALS

[Title omitted]

[fol. 44] [File endorsement omitted]

PRAECIPE FOR TRANSCRIPT OF RECORD—Filed Dec. 2, 1939

To the Clerk of the United States Board of Tax Appeals:

You are hereby requested to prepare and certify and transmit to the Clerk of the United States Circuit Court of Appeals, Second Circuit, with reference to petition for review heretofore filed by the petitioners in the above cause, a transcript of the record in the above cause, prepared and transmitted as required by law and by the rules of said Court, and to include in said transcript of record the following documents or certified copies thereof, to wit:

1. The Docket entries of all proceedings before the United States Board of Tax Appeals.

2. Pleadings before the United States Board of Tax Appeals as follows:

(a) Petition for redetermination including the deficiency letter attached thereto.

(b) Answer of the Respondent.

3. The findings of fact and opinion of the United States Board of Tax Appeals.

[fol. 45] 4. The decision of the United States Board of Tax Appeals.

5. The notice of filing and petition for review and assignment of errors filed by the petitioners in the above cause.

6. The statement of evidence as approved and settled by the United States Board of Tax Appeals together with Respondent's Exhibits A and B.

7. All orders of enlargement, if any.

8. This praecipe together with proof of service of a copy thereof.

Clarence Castimore, Henry W. Taft, Attorneys for Petitioners, 14 Wall Street, New York City.

Service of a copy of the foregoing praecipe is hereby acknowledged this 2nd day of December, 1939, and the same is agreed to on behalf of the Respondent.

J. P. Wenchel, Attorney for Respondent.

[fol. 46] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 47] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT, OCTOBER TERM, 1939

No. 234

(Argued April 9, 1940. Decided April 22, 1940)

HENRY W. TAFT and JULIA W. S. TAFT, Petitioners,

against

GUY T. HELVERING, Commissioner of Internal Revenue, Respondent

On petition to review an order of the Board of Tax Appeals fixing an assessment upon the petitioners' income taxes for the years 1934 and 1935.

Before: L. Hand, Augustus N. Hand and Patterson, Circuit Judges

Clarence Castimore for the petitioners.
Robert N. Anderson for the respondent.

Per CURIAM:

Order affirmed upon the authority of Pierce v. Helvering, 100 F. (2d) 397 (C. C. A. 2).

[fol. 48] UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the 8th day of May one thousand nine hundred and forty.

Present: Hon. Learned Hand, Hon. Augustus N. Hand, Hon. Robert P. Patterson, Circuit Judges.

HENRY W. TAFT and JULIA W. S. TAFT, Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent

Appeal from the United States Board of Tax Appeals

This cause came on to be heard on the transcript of record from the United States Board of Tax Appeals, and was argued by counsel.

On Consideration Whereof, it is now hereby ordered, adjudged, and decreed that the order of said United States Board of Tax Appeals be and it hereby is affirmed.

It is further ordered that a Mandate issue to the said Board in accordance with this decree.

D. E. Roberts, Clerk.

[fol. 49] [Endorsed:] United States Circuit Court of Appeals, Second Circuit. Henry W. Taft and Julia S. S. Taft, v. Commissioner of Int. Revenue. Order for Mandate. United States Circuit Court of Appeals, Second Circuit. Filed May 8, 1940. D. E. Roberts, Clerk.

[fol. 50] UNITED STATES OF AMERICA,
Southern District of New York:

I, D. E. Roberts, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages, numbered from 1 to 49, inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of Henry W. Taft and Julia W. S. Taft, Petitioners, against Commissioner of Internal Revenue, Respondent, as the same remain of record and on file in my office.

In Testimony Whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this fifteenth day of June, in the year of our Lord one thousand nine hundred and forty, and of the Independence of the said United States the one hundred and sixty-fourth.

D. E. Roberts, Clerk. (Seal.)

[fol. 51] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 14, 1940

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted, limited to the second question presented by the petition. The case is assigned for argument immediately following No. 113.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on Cover: Enter Clarence Castimore. File No. 44532. U. S. Circuit Court of Appeals, Second Circuit. Term No. 183. Henry W. Taft and Julia W. S. Taft, Petitioners, vs. Guy T. Helvering, Commissioner of Internal Revenue. Petition for writ of certiorari and exhibit thereto. Filed June 26, 1940. Term No. 183 O. T. 1940.

(344)